

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION**

**JAMES PLEDGE**

**PLAINTIFF**

v.

**No. 1:05CV55-M-B**

**WINSTON COUNTY CIRCUIT COURT, ET AL.**

**DEFENDANTS**

**ORDER OF DISMISSAL**

The court, *sua sponte*, takes up the dismissal of the plaintiff's case filed under 42 U.S.C. § 1983. The plaintiff, a prisoner proceeding *pro se*, seeks review of the defendants' decision to remove sixty days of meritorious earned time because the plaintiff filed a motion for post-conviction collateral relief in the Circuit Court of Winston County, Mississippi. The plaintiff seeks to have the sixty days of earned time returned, thus reducing the length of his sentence. The plaintiff thus does not challenge the conditions of his confinement, as required under 42 U.S.C. § 1983; he instead challenges the fact and duration of his confinement, a claim which he should have brought as a *habeas corpus* claim under 28 U.S.C. § 2254. A claim under 42 U.S.C. § 1983 does not accrue until the conviction or sentence has been invalidated. *Heck v. Humphrey*, 512 U.S. 477, 489-90 (1994). As the plaintiff has not shown that his conviction or sentence has been reversed, expunged, invalidated or impugned by the grant of a writ of *habeas corpus*, his claim under 42 U.S.C. § 1983 is not ripe for consideration and should be dismissed without prejudice to his ability to file a *habeas corpus* claim under 28 U.S.C. § 2254.

**SO ORDERED**, this the 27<sup>th</sup> day of April, 2005.

/s/ Michael P. Mills  
**UNITED STATES DISTRICT JUDGE**

